THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.26412 OF 2005

DATED:12.12.2005

Between:

M/s.P.Chandraiah & Co.,

H.No.11-25-131, M.G.Road,

Warangal. A partnership firm

Rep. by its Partner, Mr.A.Sudhakar

S/o.Mallaiah,

R/o.H.No.12-3-132, Yellam Bazar,

Warangal

…Petitioner

And

The Vijaya Bank, Tailors' Street Branch

Hanamkonda, Warangal and another

…Respondents

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ORDER:

The petitioner firm is a registered contractor. It became highest bidder in the auction conducted to give licence to collect trade licence for the year 2005-2006 with effect from 1.3.2005 to 28.2.2006 by collecting a sum of Rs.30,00,000/-. As required under the terms of the contract/licence, the petitioner furnished bank guarantee. Second respondent, namely, Municipal Corporation of Warangal, also issued a notification on 12.7.2005 informing the general public and commercial/business establishments to the effect that the petitioner firm has right to collect trade licence fee during the period from 1.3.2005 to 28.2.2006. It appears, private educational institutions, restaurants and establishments approached this Court by filing Writ Petition questioning collection of trade licence fee and obtained stay from this Court. When

second respondent Corporation demanded monthly/bi-monthly instalments from the petitioner, the petitioner sent appropriate replies accordingly. However, second respondent issued notice dt.1.12.2005 demanding from the petitioner payment of a sum of Rs.23,92,420/- upto February 2006, and payment of instalment for the month of November, 2005. By the impugned notice, the petitioner was also informed that if he fails to pay the amount along with penal interest at the rate of 2.5%, the bank guarantee furnished by the petitioner would be invoked. Aggrieved by the same, present Writ Petition is filed.

Learned counsel for the petitioner strenuously contends that the action of the second respondent in invoking bank guarantee is unfair and arbitrary. According to the learned counsel, by reason of interim orders passed by this Court in the Writ Petition filed by some private educational institutions and traders, the petitioner could not collect the entire trade licence fee and could not pay the amount as per the agreement. It would be un-equitable for second respondent to invoke bank guarantee and being a public authority cannot act so arbitrarily.

The petitioner has not furnished any particulars about the Writ Petition allegedly filed by some traders questioning the collection of trade licence fee. Be that as it is, the petitioner was given work order on 27.6.2005 enabling it to collect the trade licence fee within the area of Warangal Municipal Corporation. The petitioner did not pay the amount regularly and accordingly the impugned notice was issued informing the petitioner to pay arrears of trade licence fee by the end of November, 2005 within three days failing which the bank guarantee would be invoked. The petitioner's counsel contends that second respondent has already addressed first respondent bank for invocation of bank guarantee. In such an event, a Writ Petition would not be maintainable.

It is well settled that a Writ Petition would not lie in the matter of invocation of bank guarantee and remedy lies in approaching the Civil Court for appropriate relief. It is also well settled that even the Civil Court is not entitled to grant injunction restraining the injured party to the agreement from invoking the bank guarantee unless fraud or misrepresentation is alleged and proved. Mere considerations of equity would not enable common law court to restrain invocation of bank guarantee (See **National Highway Authority of India v. M/s.Ganga Enterprises**).

The Writ Petition is filed essentially to prevent the second respondent from invoking bank guarantee furnished by the petitioner. Further, the impugned order is only by way of notice. Nothing prevents the petitioner to approach the second respondent in this regard. The relationship between petitioner and second respondent is contractual and therefore this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

The Writ Petition for the above reasons is dismissed.

(V.V.S.RAO, J)

12.12.2005

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